

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>Charter Communications Inc.,</b>	)	MB Docket No. 18-_____
<b>Time Warner Cable Pacific West, LLC, and</b>	)	
<b>Bresnan Communications, LLC</b>	)	
	)	
Petition for Declaratory Ruling,	)	
Enforcement Order, and Further Relief For	)	
Violations of Sections 76.1603 and 76.309	)	
of the Commission's Rules	)	

**PETITION FOR DECLARATORY RULING,  
ENFORCEMENT ORDER, AND FURTHER RELIEF**

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March 15, 2018

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## **SUMMARY**

The City of Yuma, Arizona, (“Yuma”), the Town of Jackson, Wyoming (“Jackson”), and the City of El Centro, California (“El Centro”) (collectively, “Municipalities”) submit this Petition as a result of violations by certain Charter Communications Inc. (“Charter”) entities of Federal Communications Commission (“Commission”) rules governing the customer service practices of cable operators. The Charter entity that holds the franchise in Jackson is Bresnan Communications, LLC. The Charter entity that holds the license in Yuma is Time Warner Cable Pacific West, LLC. The entity that holds a state franchise permitting it to serve El Centro is Time Warner Cable Pacific West, LLC. Both are subsidiaries of and ultimately controlled by Charter. On Friday, February 2, 2018 at 5:00 p.m. Eastern time, Charter terminated carriage on the cable systems it controls of local broadcast stations owned by Northwest Broadcasting, Inc. (“Northwest”), including broadcast stations serving the Municipalities.

The Commission’s rules require 30 days’ advance notice to subscribers and local franchising authorities before the deleting a channel from a cable operator’s channel lineup and before increasing rates. Charter intentionally violated these rules by failing to deliver any advance notice to subscribers or the Municipalities. Accordingly, pursuant to Section 76.7 of the Commission’s rules, the Municipalities submit this complaint and petition asking that the Commission find that: Charter violated the Commission’s rules; Charter must provide subscribers with appropriate refunds; and forfeitures should be imposed commensurate with Charter’s intentional violation of the Commission’s rules.

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The City of Yuma, Arizona, (“Yuma”), the Town of Jackson, Wyoming (“Jackson”), and the City of El Centro, California (“El Centro”) (collectively, “Municipalities”) submit this Petition as a result of violations by certain Charter Communications Inc. (“Charter”) entities of Federal Communications Commission (“Commission”) rules governing the customer service practices of cable operators. The Charter entity that holds the franchise in Jackson is Bresnan Communications, LLC. The Charter entity that holds the license in Yuma is Time Warner Cable Pacific West, LLC. The entity that holds a state franchise permitting it to serve El Centro is Time Warner Cable Pacific West, LLC.<sup>1</sup> Both are subsidiaries of and ultimately controlled by Charter. On Friday, February 2, 2018 at 5:00 p.m. Eastern time, Charter terminated carriage on the cable

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<sup>1</sup> The authorization that constitutes the cable franchise within the meaning of the Cable Communications Policy Act of 1984 is nominated a license in Yuma and a franchise in Jackson and El Centro.

systems it controls of local broadcast stations owned by Northwest Broadcasting, Inc. (“Northwest”), including broadcast stations serving the Municipalities.

The Commission’s rules require 30 days’ advance notice to subscribers and local franchising authorities before the removal of a channel from a cable operator’s channel lineup and before increasing rates.<sup>2</sup> Charter violated these rules by failing to deliver any advance notice to subscribers or the Municipalities. Accordingly, pursuant to the Commission’s rules,<sup>3</sup> the Municipalities submit this complaint and petition asking that the Commission find that: Charter violated the Commission’s rules; Charter must provide subscribers with appropriate refunds; and forfeitures should be imposed commensurate with Charter’s intentional violation of the Commission’s rules.<sup>4</sup>

## **I. THE COMPLAINANTS**

### **Yuma**

Yuma is a local franchising authority within the meaning of the Cable Communications Act of 1984, as amended.<sup>5</sup> Yuma granted, and in 2015 extended, a cable license held by Time Warner Cable Pacific West, LLC, and subsequently authorized a transfer of control of licensee to Charter. Time Warner Cable Pacific West, LLC’s cable service to customers in Yuma included

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<sup>2</sup> 47 CFR 76.1603(b) and (c).

<sup>3</sup> 47 CFR 76.7.

<sup>4</sup> Each community believes that it has independent authority to find a breach of its respective license or franchise, and to adopt appropriate remedies. However, given the broader effects of Charter’s actions on the Municipalities and other communities, and the evident attempt to evade notice obligations, the Municipalities believe that Commission action is also appropriate.

<sup>5</sup> 47 U.S.C. § 522(10). Yuma exercises its licensing authority pursuant to Article XIV of its Charter, and A.R.S. § 9-506.

KYMA and KSWT, affiliates of NBC and CBS, respectively, and both owned by Northwest.<sup>6</sup>

On February 2, 2018 at 5:00 p.m. Eastern, Charter removed KYMA and KWST from its channel lineup for customers in Yuma.<sup>7</sup>

Yuma was not notified by any Charter entity until 5:31 p.m. Eastern, half an hour *after* the channels were removed. Subscribers in Yuma were not notified by any Charter entity until 7:03 p.m. Eastern, more than *two hours after* the removal of the channels from their packages.<sup>8</sup> Yuma subsequently issued a notice to Charter that Time Warner Cable Pacific West, LLC had violated its license, and was subject to remedies including liquidated damages. Charter responded to the notice by letter dated February 19, 2018, denying any violation, and taking no steps to cure the violation.<sup>9</sup>

### **Jackson**

Jackson is a local franchising authority within the meaning of the Cable Communications Act of 1984, as amended.<sup>10</sup> Jackson granted a franchise to Bresnan Communications, LLC in 2015, a subsidiary of Charter, and adopted it pursuant to Ordinance 1087.<sup>11</sup> Bresnan Communications, LLC's cable service to subscribers in Jackson included carriage of KPVI, a local broadcast affiliate of NBC, owned by Northwest.<sup>12</sup> On February 2, 2018, at 5:00 p.m.

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<sup>6</sup> Declaration of Brian Brady, Chief Executive Office, Northwest Broadcasting, Inc. at ¶ 2 ("Brady Declaration").

<sup>7</sup> Declaration of Greg Wilkinson, City Administrator City of Yuma, at ¶ 2 ("Wilkinson Declaration")

<sup>8</sup> *Id.*; Wilkinson Exhibit A (Email from Laurence Schott to Greg Wilkinson, Feb. 2, 2018)

<sup>9</sup> Wilkinson Exhibit C (Response from Charter to Yuma's Notice).

<sup>10</sup> 47 U.S.C. § 522(10).

<sup>11</sup> Declaration of Robert McLaurin, Town Manager of Jackson, Wyoming at ¶ 1 ("McLaurin Declaration").

<sup>12</sup> Brady Declaration at ¶ 2.

Eastern, Charter removed KPVI from its channel lineup in Jackson, without providing any advance notice to Jackson or to its subscribers.<sup>13</sup>

Jackson was never notified, and had to contact Charter to inquire about the blackout. Charter responded by letter dated February 13, 2018, eleven (11) days after the channels were removed.<sup>14</sup> Subscribers in Jackson were not notified until after the removal of the channels from their packages had already occurred.<sup>15</sup> On March 6, 2018, Jackson issued a formal notice of violation to the company and request for records.<sup>16</sup> The company has taken no steps to cure the violation.

### **El Centro**

El Centro is authorized under California's Digital Infrastructure and Video Competition Act ("DIVCA") and pursuant to local ordinance, to enforce customer service standards.<sup>17</sup> Charter provides cable service in El Centro pursuant to a state video services franchise granted to its subsidiary, Time Warner Cable Pacific West, LLC, by the California Public Utilities Commission.<sup>18</sup>

Time Warner Cable Pacific West LLC's cable service to El Centro included KYMA and KSWT, affiliates of NBC and CBS, respectively, and both owned by Northwest.<sup>19</sup> On February

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<sup>13</sup> McLaurin Declaration at ¶ 2.

<sup>14</sup> McLaurin Declaration at ¶ 3; *see also* McLaurin Exhibit A.

<sup>15</sup> McLaurin Declaration at ¶ 4; *see also* McLaurin Exhibit B.

<sup>16</sup> McLaurin Declaration at ¶ 6; *see also* McLaurin Exhibit D.

<sup>17</sup> Declaration of Elizabeth Martyn, City Attorney, City of El Centro, California, at ¶¶ 1, 3 ("Martyn Declaration"); City of El Centro Municipal Code Sec. 16-462.

<sup>18</sup> Martyn Declaration at ¶ 2.

<sup>19</sup> Martyn Declaration at ¶ 4

2, 2018, Charter removed KYMA and KWST from its channel lineup in El Centro without any prior notice.<sup>20</sup>

## II. THE DISPUTE

The local broadcast stations serving subscribers in Yuma, Jackson, and El Centro were all carried by Charter subsidiaries pursuant to one or more retransmission consent agreements between Charter and Northwest.<sup>21</sup> Those agreements were extended in December, 2016, and was scheduled to expire on January 31, 2018.<sup>22</sup> The agreement, or agreements, affected stations serving not only the Municipalities, but also communities in California, Oregon, Idaho, and New York.<sup>23</sup>

Northwest reached out to Charter approximately eight months *before* the scheduled expiration date (i.e. about May 2017), but Charter's letters to Yuma and Jackson suggest that the companies did not actually begin discussing the agreement until October, 2017.<sup>24</sup> Charter appears to have presented an oral proposal on November 20, 2017, which it reiterated on January 17, 2018 – two weeks *before* the agreement was scheduled to expire.<sup>25</sup> Charter's oral offer was not put in writing until February 2, 2018.<sup>26</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> Brady Declaration at ¶ 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Wilkinson Exhibit C; McLaurin Exhibit C (Letter from Mary Roehr to Audrey Cohen-Davis, February 16, 2018.)

<sup>25</sup> Brady Declaration at ¶ 3.

<sup>26</sup> *Id.*



On the expiration date, January 31, Charter said that it would enter into “day-to-day” extensions of the agreement,<sup>27</sup> and in fact, Northwest offered a 24-hour extension, which Charter accepted.<sup>28</sup> Negotiations continued through February 1, and an additional 24-hour extension until February 2nd was agreed to. Charter’s written proposal was submitted just before the extension was about to expire.<sup>29</sup>

On February 2, Northwest proposed a further 24-hour extension to allow negotiations to continue.<sup>30</sup> Charter declined, demanding instead a 3-day extension until February 5, to allow Charter subscribers to watch the Super Bowl but indicating that Charter would agree to no further extensions, and would eliminate the channels on February 5 if an agreement was not reached.<sup>31</sup> Northwest stated a willingness to discuss additional extensions, but at 4:50 p.m. Eastern on February 2 – ten minutes before the expiration of the agreement – Charter refused to consent to a 24-hour extension and told Northwest that Charter was removing the stations covered by the retransmission consent agreement at 5:00 p.m. Eastern that day.<sup>32</sup>

Ten minutes after refusing a further extension, at 5:00 p.m. Eastern on February 2, 2018, Charter removed KYMA, KSWT, KPVI, and all associated channels covered by the carriage agreement from its cable services.<sup>33</sup>

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<sup>27</sup> Wilkinson Exhibit C, Attachment B (email from Charter to Northwest dated January 31, 2018.)

<sup>28</sup> Brady Declaration at ¶ 4.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

No notice was provided to subscribers, or to the Municipalities, prior to Charter's removal of the channels.<sup>34</sup>

Charter never sought an extension that would permit them to comply with notice obligations to subscribers, or to the Municipalities, and evidently chose not to give notice 30 days before the scheduled expiration of the carriage agreement.<sup>35</sup>

### **III. CHARTER'S ACTIONS AFTER DELETING THE CHANNELS**

Following its removal of Northwest's stations from its cable lineup, Charter began to undertake some limited, insufficient efforts to provide after-the-fact notice to the Municipalities and its customers.

Charter made on-air announcements of the removal after it had been carried out, notified subscribers via email, distributed the address of a website (<http://www.northwestfairdeal.com>) which Charter established blaming Northwest for the blackout, and advised subscribers that they could view NBC programming (including the Super Bowl and the Olympics) that would have been carried on the Northwest channels via NBC streaming video services.<sup>36</sup> While the Municipalities and subscribers did not receive notice that the channels would be removed until after Charter shut them down, Charter had in fact been planning its post-blackout notice and public relations campaign for weeks. ICANN WHOIS records indicate that the website "northwestfairdeal.com," which contained the Charter attacks blaming Northwest for the

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<sup>34</sup> Wilkinson Declaration at ¶ 2; McLaurin Declaration at ¶ 3; Martyn Declaration at ¶ 4.

<sup>35</sup> Brady Declaration at ¶ 5.

<sup>36</sup> Charter Spectrum, Northwest Fair Deal, <http://www.northwestfairdeal.com/> (last accessed Mar. 15, 2018); Wilkinson Exhibit A.

programming disruption, had been registered by Charter on January 18, 2018, almost two weeks before the estimated expiration, and the day after Charter made an oral offer to Northwest.<sup>37</sup>

Not only did Charter fail to provide advance notice, the notice it did provide was misleading. It implied customers had streaming alternatives that either were not adequate substitutes, or would not actually be available to them once Charter stopped carrying the stations. Subscribers were not only given late notice, they were given misleading notice Friday afternoon on Super Bowl weekend.<sup>38</sup>

In response to Charter's actions and to substantial public frustration generated by Charter's blackout, the Municipalities took steps to investigate Charter's actions. As noted above, the Municipalities undertook various efforts, including giving Charter formal notice of its noncompliance with its franchise obligations and Commission regulations, and providing an opportunity to cure.

On February 20, 2018, Jackson held a Town Council workshop at which the Charter situation was discussed. Ms. Mary Roehr attended, representing Charter, and in response to questions as to why it was possible for Charter to have registered a domain name, while having failed to provide notice to Jackson or its subscribers in Jackson, she stated:<sup>39</sup>

Yeah, I'd say there's probably two parts to that. The first one is that in these negotiations sometimes come down to the months, the week, the day, or even indeed the hour before agreements are reached. I make mention of that with respect to advance notice. We have asked for and we have received ... day to day, 24-hour extensions of our contract. So, in

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<sup>37</sup> ICANN WHOIS result for "northwestfairdeal.com", <https://whois.icann.org/en/lookup?name=northwestfairdeal.com> (last accessed Mar. 15, 2018).

<sup>38</sup> For example, Subscribers in Jackson were unable to access NBC programming through streaming applications, despite Charter's insistence that such options would serve as a substitute. McLaurin Declaration at ¶ 2. Yuma received customer complaints from customers who were unable to connect to, or watch the services. Wilkinson Declaration at ¶ 3.

<sup>39</sup> McLaurin Exhibit D.

that negotiation process in terms of advance notice that's why I would say that advance notice could not have been, could not have been delivered. With respect to the domain name, we certainly have been aware of, and I think the letter states that, Northwest Broadcasting's previous disputes and it was prudent for us, in the interest of our customers, in the event that we were not able to reach an agreement, to prepare for methods, ways in which we could communicate should KPVI chose to remove its programming, its authorization to carry its programming. So, that's why that was done weeks in advance, given the track record of Northwest Broadcasting.

The violations were not cured, and the rationales provided (as we explain below) merely underline the significance of the violations.

#### **IV. CHARTER'S FAILURE TO PROVIDE 30 DAYS' ADVANCE NOTICE TO ITS SUBSCRIBERS AND TO THE MUNICIPALITIES VIOLATED SECTIONS 47 CFR 76.1603(b) AND (c) OF THE COMMISSION'S RULES**

The Commission's regulations, specifically 47 CFR 76.1603(b), require that customers be given written notice of "any changes in rates, programming services or channel positions" as soon as possible, and in any case at least thirty days in advance "if the change is within the control of the cable operator."<sup>40</sup> 47 CFR 76.1603(c) supplements that requirement by specifying that local authorities also be notified, and that "when the change involves the addition or deletion of channels, each channel added or deleted must be separately identified."<sup>41</sup> Specific advance notice of channel deletion must therefore be provided to both affected subscribers, and to local authorities.

The Commission adopted these rules to further at least two main objectives:

First, it provides customers with the opportunity to make their voices heard before any programming changes are made. Second, it allows

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<sup>40</sup> 47 CFR 76.1603(b).

<sup>41</sup> 47 CFR 76.1603(c).

customers to make arrangements to secure dropped channels through alternative means, such as by changing service providers.<sup>42</sup>

The Media Bureau reiterated, in reconsideration of that same matter, that “one of the principal purposes of Section 76.1603...is to allow consumers to make alternative arrangements to view programming that is dropped by a cable provider.”<sup>43</sup>

Charter was plainly in control of the deletion of Northwest’s channels from its lineup. It had an offer in hand that permitted it to continue to carry the signals. Northwest indicated it was willing to provide further extensions.

Charter made no effort to comply with the Commission’s notice rules. It never sought a longer extension of its carriage rights to ensure compliance with the rules – it sought instead only “day-to-day” extensions.

Charter timed the channel deletion at the end of the week, when it must have known that its subscribers would have had little opportunity to find an alternative way to ensure delivery of the Super Bowl, or other programming. It chose not to provide notice earlier - at the time it geared up its public relations plan to attack Northwest, for example.

From a customer perspective, then, this is a clear violation of the rules, and a violation that seems in all likelihood to have been planned to place the most pressure on Northwest, while avoiding the customer losses Charter might otherwise have suffered had it provided notice 30 days in advance.

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<sup>42</sup> *Time Warner Cable, a Division of Time Warner Entertainment Company, L.P.* 21 FCC Rcd. 8808 (Med. Bur. 2006) at ¶7, *on recon*, 21 FCC Rcd. 9016 (Med. Bur. 2007). (“NFL Reconsideration Order”).

<sup>43</sup> NFL Reconsideration Order at ¶ 23.

Indeed, the overall pattern here reveals a disregard for customer interests, and disregard for the Commission's rules. The Commission has narrowly defined circumstances "not within the control of the cable operator" in 47 CFR 76.309(c)(4)(ii):

Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

The Commission's definition distinguishes plainly between those events which are wholly unpredictable – natural disasters, utility outages, or extreme weather – with those which any business might reasonably be expected to have awareness of in the course of its normal operations. Specifically, the Commission observed that "events [that] are generally scheduled by the cable operator" and events for which "the operator knows the schedule reasonably well in advance of the event" are within the operator's control.<sup>44</sup> Charter was not only plainly aware of the scheduled agreement deadline, but its behavior demonstrates advance planning in anticipation of blacking out Northwest's channels, a negotiating strategy that was built around intentional brinksmanship, and a refusal to accept extensions, or to seek extensions that would permit rule compliance.

The failure to provide adequate notice was compounded by the fact that the notice that was eventually provided, far from being "understandable" as required by Section 76.1306(c), was deceptive, misleading customers as to the effect of Charter's decision on them. Charter proposed viewership solutions which suggested that there were some streaming options (which,

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<sup>44</sup> *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection & Customer Service*, Report & Order, 8 FCC Rcd. 2892, 2903 ¶ 43 (1993).

if available, would have been available to those with Charter's Internet service) that were in fact not available, or that were not satisfactory alternatives. Charter plainly had the advance warning and the foresight to plan for a blackout and position itself to use public outrage about the blackout for better leverage in subsequent negotiations, yet deliberately chose *not* to notify either the Municipalities or its subscribers, as required by law. Furthermore, the removal of marquee programming channels substantially changed the cable services provided, effectively constituting a rate increase without the notice required by the Commission's rules. These willful and repeated violations of the Commission's rules warrant a strong response, as described below.

### **RELIEF REQUESTED**

Charter has willfully violated the 30-day notice requirement contained in the Commission's rules by failing to provide any advance notice whatsoever of its decision to remove Northwest's channels from Charter's cable systems. What is more, the effect of that removal was also an increase in the rates paid by customers, also made without the required notice. Customers received less on February 3 than they had contracted for, and were paying the same rates for a service that was distinctly diminished.

In order to protect customers, and to ensure that this behavior does not recur, the Commission should:

- A. Declare that Charter has violated 47 CFR 76.1603.
- B. Order Charter to make public disclosures appropriate to correct any misrepresentation that the channel deletion did not involve fault on the part of Charter.
- C. Ensure appropriate refunds are issued to affected Charter subscribers for the un-noticed rate increase, without the need for customers to call Charter.

D. Assess substantial and appropriate forfeitures against Charter for its knowing, intentional, and repeated violation of the Commission's rules, pursuant to 47 CFR 1.80.

The Municipalities respectfully request that the Commission grant the relief requested above, and any other relief it deems appropriate.

Respectfully submitted,

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Town of Jackson, Wyoming*

March 15, 2018



## **CERTIFICATE OF SERVICE**

I hereby certify that, on March 15, 2018 I sent a copy of the forgoing **PETITION FOR DECLARATORY RULING, ENFORCEMENT ORDER, AND FURTHER RELIEF** via UPS delivery to the following party:

Richard R. Dykehouse  
Executive Vice President & General Counsel  
Charter Communications, Inc.  
400 Atlantic Street  
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Furthermore, additional copies have been distributed electronically to the following Charter representatives:

Laurence Schott  
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Dated: March 15, 2018

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